REAL EVIDENCE—ADMISSIBILITY IN CRIMINAL AND CIVIL CASES.—The defendant was indicted and tried for murder. The death was caused by a bullet fired through the head of the victim and the identified skull of the deceased was admitted in evidence, over the objection of the defendant, in order to furnish an ocular demonstration to the jury of the place of entrance and exit, and the course of the bullet that produced the death. The skull was also used to illustrate and corroborate the evidence of the surgeon who conducted the *post mortem* examination of the deceased. Defendant was convicted and he appealed claiming, among other assignments of error, that the skull was wrongfully admitted as evidence. *Held*, evidence admissible. *Larmon* v. *State* (Fla.), 88 So. 471 (1921).

Real evidence, or the production of the *res* for inspection by the tribunal, is permitted to clarify some issues and to give to the jury and the court a clearer comprehension of the physical facts than can be obtained from testimony of witnesses. *Gentry* v. *McMinnis*, 3 Dana (Ky.) 382 (1835); *Warlick* v. *White*, 76 N. C. 175 (1877); *Hays* v. *Gainsville St. Ry. Co.*, 70 Tex. 602, 8 S. W. 491, 8 Am. St. Rep. 624 (1888); *Kelley* v. *City of Spokane*, 83 Wash. 55, 145 Pac. 57 (1914); I GREENLEAF ON EVIDENCE (16th Ed.) § 13b; II WIGMORE ON EVIDENCE § 1151; II TAYLOR ON EVIDENCE 359. In a few of the earlier cases such evidence by inspection was excluded because it was impossible to transmit to the higher court on appeal the source of belief thus laid before the jury. *Stephenson* v. *State*, 28 Ind. 272 (1867); *Hagee* v. *Grossman*, 31 Ind. 223 (1869); *Smith* v. *State*, 42 Tex. 444 (1875); *Hanawalt* v. *State*, 64 Wis. 84, 24 N. W. 489, 54 Am. Rep. 588 (1885); I GREENLEAF ON EVIDENCE (16th Ed.) § 13i; II WIGMORE ON EVIDENCE § 1168. However, this doctrine has been generally repudiated and whether real evidence is admissible or not now rests largely in the discretion of the trial court, subject to certain limitations. *Leonard* v. *Southern Pac. Co.*, 21 Ore. 555, 28 Pac. 887, 15 L. R. A. 221 (1892); *Staver Carriage Co.* v. *American & British Mfg. Co.*, 188 Ill. App. 634 (1914); *Schroeder* v. *Hotel Commercial Co.*, 84 Wash. 685, 147 Pac. 417 (1915).

Inspection by the jury may be excluded where in the opinion of the court it would unnecessarily excite their sympathy or antipathy. *Rost* v. *Brooklyn, etc., R. Co.*, 41 N. Y. S. 1069, 10 App. Div. 477, 4 N. Y. Ann. Cas. 19 (1896); *Selleck* v. *City of Janesville*, 104 Wis. 570, 80 N. W. 944, 76 Am. St. Rep. 892, 47 L. R. A. 691 (1899); PHIPSON, LAW OF EVIDENCE (5th Ed.) 4. Or where the exhibition would be offensive or indecent without a compensating advantage. *Knowles* v. *Crampton*, 55 Conn. 336, 11 Atl. 593 (1887); *Garvik* v. *Burlington, etc., R. Co.*, 124 Ia. 691, 100 N. W. 498 (1904). But real evidence should be received where it is both relevant and highly probative and the dangers of its use are small in comparison with its advantages. *Mulhado* v. *Brooklyn City R. Co.*, 30 N. Y. 370 (1864); *Langworthy* v. *Township of Green*, 95 Mich. 93, 54 N. W. 697 (1893); *Carrico* v. *West Virginia, etc., R. Co.*, 39 W. Va. 86, 19 S. E. 571, 24 L. R. A. 50 (1894). However, before such evidence is admissible it must appear, as a condition precedent, that the *res* has not sustained or undergone any change since the happening of the event sought to be proved. *Self* v. *State*, 90 Miss. 58, 43 So. 945, 12 L. R. A. (N. S.) 238 (1907); *State* v. *Baltimore, etc., R. Co.*, 117 Md. 280, 83 Atl. 166 (1912); 10 R. C. L. 992.

Applying these principles it has been held that in prosecutions for homicide or assault the clothes worn by the deceased or person assaulted may be introduced to show the position of the parties and the character or number of wounds inflicted. *Slone* v. *Commonwealth* (Ky.), 207 S. W. 464 (1919); *Pickens* v. *State* (Tex.), 218 S. W. 755 (1920); *Graham* v. *Commonwealth,* 127 Va. 808, 103 S. E. 565 (1920). Nor is the fact that the clothes have been washed since the happening of the event such a change as will affect their admissibility. *Pate* v. *State,* 150 Ala. 10, 43 So. 343 (1907); *State* v. *McGuire,* 84 Conn. 470, 80 Atl. 761, 38 L. R. A. (N. S.) 1045 (1911); *Ragsdale* v. *State,* 12 Ala. App. 1, 67 So. 783 (1915); *State* v. *Benson,* 46 Utah 1, 148 Pac. 445 (1915). Also it has been held proper to admit in evidence part of the deceased's vertebral column, or a section of his ribs and vertebra, to show the direction and lodgment of the bullet which caused the death. *State* v. *Weiners,* 4 Mo. App. 492 (1877); Aff. 66 Mo. 13 (1877); *Turner* v. *State,* 89 Tenn. 547, 15 S. W. 838 (1891). And in an extreme case, *State* v. *Vincent,* 24 Ia. 570, 95 Am. Dec. 753 (1868), a human head which had been found severed from the body and had been preserved in alcohol was admitted as evidence, apparently without objection. Brass knucks, found in the accused's vest pocket and which fitted the wound in the deceased's forehead, have been admitted as real evidence. *State* v. *Sprouse* (Mo.), 177 S. W. 338 (1915). In *Taylor* v. *U. S.,* 32 C. C. A. 449, 89 Fed. 954 (1898) the prosecution was allowed to operate before the jury a counterfeiting machine taken from the possession of the accused. While in *Hughes* v. *State,* 126 Tenn. 40, 148 S. W. 543, Ann. Cas. 1913D, 1262 (1912), it was held that the trial court in its discretion might allow the State to assemble and arrange in the court room all the furniture, rugs, etc., found in the room in which the killing occurred.

On the other hand, it has been held that upon a trial for manslaughter a portion of the skull of the deceased is not admissible in evidence where it has been buried for a long time and the evidence does not clearly show that it is in the same condition that it was at the time of the burial. *Self v. State, supra.* Nor should the bloody and soiled clothing of the deceased be admitted where it does not appear that such evidence will tend to throw light upon some material inquiry. *Christian* v. *State,* 46 Tex. Cr. Rep. 47, 79 S. W. 562 (1904); *Williams* v. *State,* 61 Tex. Cr. Rep. 356, 136 S. W. 771 (1911); *Flege* v. *State,* 93 Neb. 610, 142 N. W. 276, 47 L. R. A. (N. S.) 1106 (1913).

It was formerly the rule that jurors could not smell or taste liquor to determine whether it was an intoxicant. *Commonwealth* v. *Brelsford,* 161 Mass. 61, 36 N. E. 677 (1894); *State* v. *Lindgrove,* 1 Kan. App. 51, 41 Pac. 688 (1895); *Wadsworth* v. *Dunnam,* 117 Ala. 661, 23 So. 699 (1898); *State* v. *Coggins,* 10 Kan. App. 455, 62 Pac. 247 (1900); *Galloway* v. *State,* 42 Tex. Cr. Rep. 380, 57 S. W. 658 (1900). However, the modern tendency seems to be to allow jurors to smell or taste liquor to determine the intoxicating quality. *State* v. *Baker,* 67 Wash. 595, 122 Pac. 335 (1912); *Enyart* v. *People* (Col.), 201 Pac. 564 (1921); *State* v. *Simmons* (N. C.), 110 S. E. 591 (1922).

These principles are equally applicable to civil cases where it has been

held, that an article or sample might be exhibited to show texture or quality of goods. Note 35 L. R. A. (N. S.) 1021. That a phonograph might be used to reproduce sounds made by the operation of trains in proximity to defendant's hotel. *Boyne City, etc., R. Co.* v. *Anderson,* 146 Mich. 328, 109 N. W. 429, 117 Am. St. Rep. 642, 8 L. R. A. (N. S.) 306, 10 Ann. Cas. 283 (1906). A plaintiff has been allowed to stick a pin in her paralyzed side to show her loss of feeling. *Osborne* v. *City of Detroit,* 32 Fed. 36 (1886), reversed for other reasons 135 U. S. 492. And although it has been held that a preserved part of the human body might be exhibited to the jury, *Anderson* v. *Seropian,* 147 Cal. 201, 81 Pac. 521 (1905), it was stated in *The Grangers Life Ins. Co.* v. *Brown,* 57 Miss. 308, 34 Am. Rep. 446 (1879), that a court would not order the exhuming of a dead body which is under the control of the plaintiff unless there is strong reason to believe that without such examination a fraud is likely to be accomplished.